

IN THE COURT OF APPEALS OF IOWA

No. 7-234 / 06-1039
Filed May 23, 2007

**IN RE THE MARRIAGE OF DEBRA J. TURNER
AND GARY R. TURNER**

**Upon the Petition of
DEBRA J. TURNER, n/k/a
DEBRA J. ANDERSON,**
Petitioner-Appellee,

**And Concerning
GARY R. TURNER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan,
Judge.

Gary Turner appeals from the district court's ruling ordering him to pay a
post-secondary education subsidy to his daughter. **AFFIRMED IN PART,
REVERSED IN PART, AND REMANDED.**

Kenneth F. Dolezal, Cedar Rapids, for appellant.

Debra J. Anderson, Walker, pro se.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

PER CURIAM

Gary Turner appeals from the district court's ruling ordering him to pay a post-secondary education subsidy to his daughter, Danielle. He contends the trial court erred by treating a Veterans' Disability Education Benefit, paid directly to Danielle, as her financial resource instead of a credit against his proportionate share of her post-secondary education expenses. We review his claims de novo. Iowa R. App. P. 6.4.

The relevant portion of the trial court's ruling provides:

The Court finds that Danielle J. Turner's expenses for tuition at Kirkwood College are the sum of \$2,280 for two semesters; that her expenses for rent for a year amount to \$2,874; that her expenses for automobile maintenance, automobile payment, gasoline and insurance are \$7,200 per year; that food for herself amounts to \$600 per year; that her expenses for two semesters for books and supplies, as shown by the evidence, are approximately \$770. Consequently, Danielle Turner's expenses for two semesters at Kirkwood College for the 2006-2007 school year amount to \$13,724. One-third of that amount is \$4,574.66. Consequently, each parent's share pursuant to the provisions of 598.21 is the amount of \$2,287.33.

The Court finds based upon Danielle Turner's financial resources, she has at her disposal the sum of \$805 per month in VA benefits for the nine months she is attending school in the two semesters of the 2006-2007 school year, for a total of \$7,245. She also has a FED Stafford loan, which must be repaid, in the amount of \$1,313 per semester. The total amount of these funds, available to Danielle Turner, are \$9,845.

We initially note that there is no dispute over the trial court's findings concerning the amount of Danielle's educational expenses or her entitlement to a subsidy for those expenses as provided in Iowa Code section 598.21(5A) (2005). The dispositive question is whether Gary should receive a credit against his share of those expenses for the amount of Veterans' Disability Education Benefits paid directly to Danielle.

Although we find no controlling authority addressing Veterans' Disability Education Benefits, our supreme court has held that Social Security Disability or retirement benefits paid directly to a child are counted as parental income and credited against the parent's child support obligations. *In re Marriage of Hilmo*, 623 N.W.2d 809, 813 (Iowa 2001). The court's stated rationale for income attribution and credit was that the right to the benefit was earned by and otherwise derives from the disabled parent. *Id.* In the absence of any authority to the contrary, we find the same rationale requires the amount of Veterans' Disability Education Benefit paid directly to Danielle should be counted as income to Gary and credited against his share of Danielle's post-secondary education expenses.

We accordingly affirm the portions of the trial court's ruling determining the amount of Danielle's post-secondary education expenses and her entitlement to a post-secondary education subsidy from her parents. We reverse the portion of the trial court's ruling establishing the parties' proportionate share of Danielle's post-secondary expenses. We additionally remand the issue concerning the amount of each party's proportionate share of Danielle's post-secondary education expenses. The trial court, in conformity with the foregoing, shall attribute as income to Gary, rather than Danielle, the amount of Veterans' Disability Education Benefits paid directly to Danielle, and Gary shall receive a credit for the amount of those benefits against his proportionate share of Danielle's post-secondary education expenses.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

All judges concur except Sackett, C.J., who concurs specially without opinion.